

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
DAWSON COUNTY GIN, INC.,	§	CASE NO. 91-50597-11
	§	
Debtor.	§	
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DAWSON COUNTY GIN, INC.,	§	
	§	
Plaintiff	§	
v.	§	ADVERSARY NO. 01-5025
	§	
CHICKASHA COTTON OIL COMPANY	§	
d/b/a LAMESA COTTON OIL MILL,	§	
	§	
Defendant.	§	

REPORT AND RECOMMENDATION

This lawsuit was referred to the bankruptcy court by the order of the district court entered May 10, 2001. Such order recites that the parties' dispute arises out of Dawson County Gin, Inc.'s Third Amended Plan of Reorganization filed in its Chapter 11 bankruptcy case, Case No. 591-50597-JCA-11. Upon receipt of the district court's order, this court set a status conference on June 25, 2001, at which time the parties raised the question of whether the bankruptcy court has jurisdiction over the issues raised by this lawsuit. The bankruptcy court submits this Report and Recommendation to the district court for consideration.

Background

1. Dawson County Gin, Inc. (Dawson County) initiated this suit by filing its complaint in the United States District Court for the Northern District of Texas, Lubbock Division, on August 1, 2000. Federal court jurisdiction is based on 28 U.S.C. § 1332 – diversity of citizenship and

the amount in controversy exceeding \$75,000.00. Dawson County also made demand for a jury trial. On September 1, 2000, Chickasha Cotton Oil Company d/b/a Lamesa Cotton Oil Mill (Chickasha) filed its original answer and counterclaim. On September 21, 2000, Chickasha filed its first amended answer. Chickasha does not dispute that federal court jurisdiction was proper.

2. On March 15, 2001, Chickasha moved for summary judgment to which response has been made by Dawson County.

3. Dawson County filed Chapter 11 bankruptcy in September, 1991. The parties' dispute does arise out of the Third Amended Plan confirmed by the bankruptcy court in Dawson County's Chapter 11 case. The plan contains a provision that effectively requires that certain cottonseed processed by Dawson County be purchased by Chickasha at the "prevailing oil mill market price for ten (10) years beginning with the 1992 crop year. If the parties disagree as to the prevailing oil mill market price, that matter shall be submitted to arbitration."

4. A dispute did in fact arise which was submitted to arbitration and resulted in an arbitration award for Dawson County of \$521,542.75, plus interest and attorney's fees.

5. The present suit seeks to enforce the arbitration award. Chickasha contends that the cottonseed it purchased was not in fact purchased from Dawson County and that the arbitrator thereby exceeded his authority in issuing the award.

6. Dawson County claims breach of contract as its base cause of action, the confirmed plan constituting the contract at issue. A final decree in the Dawson County bankruptcy case was entered on March 2, 1994, and, on April 26, 1994, the case was closed. Accordingly, the Dawson County Chapter 11 case was fully administered and closed several years before the present lawsuit was filed

with the district court.

Jurisdiction of the Bankruptcy Court

7. The bankruptcy court's jurisdiction extends to "all cases under Title 11" and "all civil proceedings arising under . . . or arising in or related to cases under Title 11". 28 U.S.C. § 1334(a) and (b). The statute actually confers jurisdiction on the district court, but the district court may refer all such cases and proceedings to the bankruptcy court. *See* 28 U.S.C. § 157(a). By the Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc, filed August 8, 1984, the district court referred such matters to the bankruptcy court.

8. The reference in § 1334(a) to a "case" under Title 11 refers to the entire bankruptcy case initiated by the filing of either a voluntary or involuntary petition. A "proceeding" arising in or related to a case refers to a particular item of litigation within the bankruptcy case itself. For this court to have jurisdiction over the issues raised in this lawsuit, such issues must arise in or relate to the Dawson County bankruptcy case. The jurisdictional question, therefore, is whether this lawsuit relates to the Dawson County bankruptcy case, which was fully administered and closed at the time the lawsuit was filed.

9. The Fifth Circuit in *In re Bass*, 171 F.3d 1016 (5th Cir. 1999) stated that "[a] proceeding is 'related to' a bankruptcy if 'the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.'" *Id.* at 1022 (the court noted that the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have adopted this test, which originated in *Pacor v. Higgins*, 743 F.2d 984 (3rd Cir. 1984)). The Fifth Circuit elaborated on this test by stating that an action is related to a bankruptcy case if the "outcome could alter the debtor's rights, liabilities, options,

or freedom of action and in any way impacts upon the handling and administration of the bankruptcy estate.” *Id.* at 1022. This results in a

conjunctive test. “For jurisdiction to attach, the anticipated outcome of the action must both (1) alter the rights, obligations and choices of action of the debtor, and (2) have an effect on the administration of the estate.” *Id.*

10. Of particular importance in the *Bass* case is the Fifth Circuit’s holding that a proceeding cannot affect the bankruptcy estate where the bankruptcy case was closed before the proceeding, i.e. the lawsuit, was ever filed. *Id.* In *Bass*, an adversary proceeding was filed before the bankruptcy court in Dallas to enforce a judgment entered in an action tried before a bankruptcy court in Utah. The Fifth Circuit held that the Dallas bankruptcy court did not have jurisdiction as, from the beginning of the litigation, there was no bankruptcy estate to affect. *Id.* The lawsuit must affect the bankruptcy estate not just the debtor. *Id.*

11. The court recognizes that the Third Amended Plan does contain provisions stating the bankruptcy court retains jurisdiction over post-confirmation matters or disputes. Specifically, Article XII of the confirmed plan, titled “Retention of Jurisdiction”, includes a provision stating that the debtor is authorized before or after confirmation to bring “any action against any party arising before or after confirmation.” However, it is well settled that a provision in a plan of reorganization that grants the bankruptcy court jurisdiction over a variety of matters arising post-confirmation is insufficient to grant jurisdiction where the court would not otherwise have jurisdiction. *Walnut Associates v. SaideI*, 164 B.R. 487 at 495 (E.D. Pa. 1994); *see also Koehler v. Grant*, 213 B.R. 567, 569 (8th Cir. B.A.P. 1997) (*citing Harstad v. First Am. Bank*, 39 F.3d 898, 902 (8th Cir. 1994), which held that plan

provision “cannot and does not *confer* jurisdiction upon the court, as only Congress may do that”); *In re Continental Airlines, Inc.*, 236 B.R. 318, 323 (Bankr. D. Del. 1999) (“[W]here a court lacks subject matter jurisdiction over a dispute, the

parties cannot create it by agreement even if in a plan of reorganization.”); *In re Almarc Corp.*, 94 B.R. 361, 365 (Bankr. E.D. Pa. 1988); *see also Zerand-Bernal Group v. Cox*, 23 F.3d 159, 164 (7th Cir. 1994) (“A court cannot write its own jurisdictional ticket.”); *see also In re Continental Airlines, Inc.*, 236 B.R. at 323; *Walnut Associates v. Saidel*, 164 B.R. at 494-495; *United States Trustee v. Gryphon at the Stone Mansion, Inc.*, 216 B.R. 764, 768 (W.D. Pa. 1997); *In re BankEast Corp.*, 132 B.R. 665, 667 (Bankr. D. N.H. 1991).

12. While many courts recognize that confirmation of a Chapter 11 plan does not divest the bankruptcy court of jurisdiction, such jurisdiction does not extend forever. *See In re A.J. Mackay Co.*, 50 B.R. 756 (D. Utah 1985). Under such circumstance, the bankruptcy court’s jurisdiction is extremely limited and extends to only those matters that concern implementation or execution of the confirmed plan. *Walnut Associates v. Saidel*, 164 B.R. 487, at 492 (*citing Zerand-Bernal Group, Inc. v. Cox*, 152 B.R. 927, 931 (Bank. N.D. Ill. 1993)).

13. It is well settled that parties may sue on the contractual obligations created under a confirmed plan. *See In re BankEast Corp.*, 142 B.R. 12 (Bankr. D. N.H. 1992). The rights and liabilities of the debtor and the creditors are defined by the plan post-confirmation in accordance with 11 U.S.C. § 1141(a) (which states a confirmed plan binds the debtor and the creditors), and a default with respect to the plan contract provides no more support for a post-confirmation exercise of jurisdiction than a default under any other post-confirmation contract. *Id.* at 14. Finally, courts hold

that “pursuant to Bankruptcy Rules 3020 and 3022, bankruptcy courts retain jurisdiction over the post-confirmation administration of the estate until the entry of a final decree.” *Walnut Associates* at 492-493; *see also John F. Beasley Construction Co., Inc. v. C.J. Mahan Construction Co.*, 1999 WL 689365, 3 (N.D. Tex. 1999) (Jurisdiction of a bankruptcy

court attaches upon the filing of a petition for order for relief and continues in a Chapter 11 proceeding until the case is closed.).

Conclusion

From the foregoing authorities, it appears that while the bankruptcy court’s jurisdiction may not necessarily terminate as to a pending adversary proceeding upon confirmation of a Chapter 11 plan, its jurisdiction weakens as the case approaches substantial consummation, entry of a final decree, and closing. Moreover, the bankruptcy court cannot retain jurisdiction over a lawsuit that is filed well after the bankruptcy case has closed. In this circumstance, it is effectively impossible for the adversary proceeding, in the bankruptcy context, to “relate to” a bankruptcy case. As noted by the Fifth Circuit in *In re Bass*, the meaning of “related to” is not as broad as it is in “ordinary parlance” where it means ““having some connection with””. *In re Bass* at 1022. A lawsuit must touch upon or affect a pending bankruptcy case. This lawsuit was filed approximately seven years after the closing of the bankruptcy case. As with any federal court, the bankruptcy court is a court of limited jurisdiction. It derives its jurisdiction from the statutory grants of Congress. *Id.* Despite the provisions of the confirmed plan retaining jurisdiction in the bankruptcy court, this court concludes that it does not hold jurisdiction in this case as such retention provisions exceed the statutory grant of jurisdiction set forth in 28 U.S.C. § 1334. The court therefore recommends that the district court withdraw the reference of this lawsuit for

disposition before the district court.

DATED: July 23, 2001.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE